

ADMINISTRATIVE PANEL DECISION

Lemon Inc. v. Name Redacted
Case No. D2023-3892

1. The Parties

The Complainant is Lemon Inc., Cayman Islands, United Kingdom, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Name Redacted.¹

2. The Domain Name and Registrar

The disputed domain name <capcutedit.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 18, 2023. On September 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 19, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (REDACTED FOR PRIVACY/PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 19, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on September 22, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

¹ The Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on September 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 18, 2023. The Response was filed by an individual that identified itself as “Adithya S” with the Center on October 17, 2023.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on October 23, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is affiliated with Bytedance Ltd (“Bytedance”), an Internet technology company that provides mobile applications (“apps”) such as TikTok.

One of the Complainant’s apps, named CapCut, was launched in April 2020 and allows users to create high-quality videos. The CapCut app reached 140 million downloads in the first half of 2021, making it the world’s ninth-most downloaded mobile app, according to app tracking firm Sensor Tower.

The Complainant maintains a primary website for CapCut at <capcut.com>, which according to SimilarWeb.com, had a total of more than 18 million visitors in August 2023 alone, ranking 3,172 globally and 4,812 in the United States (Annex 8 to the Complaint).

The Complainant is the owner of the following, amongst others, trademarks (Annex 1 to the Complaint):

- United States of America trademark registration No. 6,847,261 for CAPCUT and design, filed on June 11, 2020, claiming first use on April 14, 2020, and registered on September 13, 2022, in class 9; and
- European Union trademark registration No. 018255581, for CAPCUT, filed on June 16, 2020, and registered on May 15, 2021, in classes 9, 41, 42 and 45.

The disputed domain name was registered on November 17, 2022, and presently resolves to an active webpage displaying information on the Complainant’s app as well as other competing apps and advertisements and pay-per-click (“PPC”) links. At the bottom of the webpage a disclaimer states “This site is for informational purpose only. All Copyrights owned by ByteDance. We are not connected to the developer of the app.”

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name entirely reproduces the well-known CAPCUT trademark with the addition of the generic, descriptive term “edit” which is closely linked and associated with the Complainant’s trademark and only serves to underscore and increase the confusing similarity thereof.

Also, according to the Complainant, the Respondent has no rights or legitimate interests in the disputed domain name given that:

- (i) the Respondent is not sponsored by or affiliated with the Complainant in any way, the Complainant not having given the Respondent license, authorization or permission to use the Complainant's trademarks in any manner, including in domain names;
- (ii) the Respondent is not commonly known by the disputed domain name;
- (iii) at the time of filing the Complaint, the Respondent was using a privacy service, which past UDRP panels have also found to equate to a lack of legitimate interest; and
- (iv) the Respondent is not making a *bona fide* offering of goods or services or legitimate, noncommercial fair use of the disputed domain name given the Respondent's inclusion of the Complainant's trademark and logo on the website available at the disputed domain name as well as information about alternatives to the Complainant's app and links to download these products, which compete with the Complainant's business.

The Complainant further contends that the disputed domain name was both registered and used in bad faith given the well-known status of the Complainant's trademark and the use of the disputed domain name in connection with a website that provides information about the Complainant's CAPCUT application and other competing apps, the disclaimer made at the bottom of the webpage not being sufficient to avoid confusion. Also, according to the Complainant, the Respondent's bad faith is further corroborated by the Respondent's choice to retain a privacy protection service and to have engaged in a pattern of bad faith conduct having registered other domain names that misappropriate the trademarks of well-known brands and businesses such as <crunchyrollanime.com> and <reminiweb.com>.

B. Respondent

The Center received on October 17, 2023, a Response from an individual who identified itself as "Adintha S". The Response was submitted using the Registrar confirmed email address. The Response states that "although the website is about the video editing application CapCut as claimed, the domain has not been registered in bad faith. The website is basically a blog where we provide information about wide ranging topics related to CapCut to general public such as how to use the software to make their editing tasks easier. We provide tutorials, how-to articles and detailed guides that solves the issues faced by the users of application. We are positively promoting the product and have given sufficient disclaimer to distinguish ourselves from the developers of the app. There is no material which infringes any copyright of the original trademark owner and all the content has been originally produced. If the trademark owner is unhappy with any specific content then we are happy to remove those specific content. We believe that by providing such tutorial in a free and fair manner we are trying to benefit both the public as well as the developer of the app who get free positive publicity from us. Therefore, this complaint has surprised us since there is no negative reference to CapCut in the entire website. We would humbly request the complaint to be therefore denied upholding the freedom of speech on the internet. Please do note that we need to run small commercial adverts occasionally to cover the server costs and content production cost."

6. Discussion and Findings

6.1. Procedural Matter – Respondent's identity

As noted above, the Panel has redacted the Respondent's name from this decision. Noting that the Response was submitted using the Registrar-confirmed email address, the Panel concludes that the registrant of the disputed domain name is indeed the individual that submitted the Response to the Center, and identified itself as "Adithya S.". The Panel will therefore consider Adithya S. as the true Respondent.

6.2 Substantive matter

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Complainant must prove in this administrative proceeding that each of the aforementioned three elements is present in order to obtain the transfer of the disputed domain name.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms ("edit"), may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent argues to be using the disputed domain name to "provide information about wide ranging topics related to CapCut to general public such as how to use the software to make their editing tasks easier" in "a free and fair manner" and "trying to benefit both the public as well as the developer of the app who get free positive publicity from us", also "giving sufficient disclaimer to distinguish ourselves from the developers of the app".

In spite of the Respondent's arguments the Panel notes that the website available at the disputed domain name counts with several sponsored advertisements and PPC links, as well as promotes third parties competing apps. Such use, in this Panel's view creates a misleading impression of association with the Complainant. Furthermore, the disclaimer included at the bottom of the webpage does not alter the Panel's finding, given the composition of the disputed domain name, any use is not likely to be considered "fair" due to the risk of implied affiliation to the Complainant.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

This case presents the following circumstances which indicate bad faith registration and use of the disputed domain name:

- a) the Complainant's trademark is registered worldwide and is well known;
- b) the Respondent's choice to retain a privacy protection service;
- c) the Respondent's commercial use of the disputed domain name to promote competing apps and profit from paid advertisements and PPC links;
- d) the registration of other domain names that relate to well-known trademarks and companies by the Respondent, which indicate that the Respondent engaged in a pattern of bad faith conduct; and
- e) the nature of the disputed domain name (reproducing the entirety of the Complainant's trademark plus the term "edit"), and the implausibility of any good faith use to which the disputed domain name may be put.

Further, UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Based on the available record, the Panel finds the third element of the Policy has been established.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name, <capcutedit.com>, be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: November 6, 2023